Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

# THE MENACE OF "PARAGRAPH TWENTY-FIVE"

BY HERBERT ADAMS GIBBONS

---

MR. J. MATTERN, of Johns Hopkins University, writing in the December, 1916, number of THE NORTH AMERICAN REVIEW, attempts to obscure the plain meaning of paragraph 25 of the New German Citizenship Law by an appeal to its historical perspective and by comparing the corresponding laws of other nations. Mr. Mattern objects strongly to what he calls my "interpretation" of his law, as set forth in *The New Map of Europe*. Mr. Mattern declares that in order to give my interpretation "the semblance of merit" I was "forced to, and actually did, suppress the rest of section 2 and the entire section 3 of paragraph 25." Mr. Mattern also charges that "Gibbons further suppresses paragraph 36." Elsewhere in his article he complains again of "the curtailed form chosen by Gibbons."

*The New Map of Europe* was written soon after the Delbrueck law went into effect, and before the provision of paragraph 25 allowing dual nationality had been widely commented upon by legal authorities. I formed my criticism of the law wholly from the text of the law itself. It seemed to me that in stating the possibility of dual nationality provided by the first section of paragraph 25 I was simply setting forth the clearly worded provision of the law. It was not necessary to quote the whole article, for the "suppressed" sentence in the second section and the whole third section in no way modified my contention that the Delbrueck law gave to Germans the legal means of enjoying dual nationality. There was no thought in my mind of forcing a doubtful interpretation by suppressing the rest of paragraph 25 and failing to mention paragraph 36. But now that Mr. Mattern

has publicly questioned my treatment of the subject, I feel that I must defend myself against the charge of inaccuracy or insincerity.

Paragraph 25 of the Delbrueck law states:

1. A German who has neither his residence nor permanent abode in Germany loses his citizenship on acquiring foreign citizenship, provided the foreign citizenship is acquired as a result of his own application therefor or the application of the husband or legal representative; but in the case of a wife or one having a legal representative, only when the conditions exist under which expatriation may be applied for according to Paragraphs 18 and 19.

2. Citizenship is not lost by one who before acquiring foreign citizenship has secured on application the written consent of the competent authorities of his home State to retain his citizenship. Before this consent is given the German Consul is to be heard.

3. The Imperial Chancellor may order, with the consent of the General Consul, that persons who desire to acquire citizenship in a specified foreign country, may not be granted the consent provided for in Paragraph 2.

In *The New Map of Europe* I wrote: "A legal means has been given to these naturalized Germans to retain, without the knowledge of the nations where their oath of allegiance has been received in good faith, citizenship in Germany." Mr. Mattern claims that this interpretation of paragraph 25 could have "the semblance of merit" only by suppressing the last sentence in section 2 and the whole of section 3.

In what way do the last sentence in section 2 and the whole of section 3 modify or nullify the force of my contentions? I must confess to the inability to grasp Mr. Mattern's criticism. The hearing of the German Consul, or the veto of the Imperial Chancellor, are matters beyond the control of the foreign nation whose adopted citizen the German desiring to enjoy dual nationality has become. It is quite obvious that if the German Government found it necessary that Germans residing in any foreign country should retain their German citizenship, the German Consuls would certainly not oppose their own Government nor would the German Chancellor veto his own measure. The provisions of the law are drafted wholly in the interests of Germany. After the experiences we have had in the United States with German Consuls during the past thirty months, Mr. Mat-

tern is naïve indeed to believe that the hearing of a German Consul would protect the interests of the country which the German in question wanted to deceive. Surely Mr. Mattern knows the case of Consul-General Bopp of San Francisco, and has read reports of the trial of Consul Aehlers of Sunderland, England.

Section 3, no more than the last sentence of section 2, seems to me to modify the clear meaning of the first sentence of section 2. Section 2 gives the German Imperial Government the opportunity of refusing the privilege of dual nationality to undesirables upon the recommendation of Consuls. Section 3 gives the German Imperial Government the opportunity of nullifying the provisions of the law in countries where its enforcement might cause trouble for Germany or in countries to which Germany wanted to discourage emigration. Neither provision, from the standpoint of the country interested, furnishes any check upon the possibility of dual nationality.

Paragraph 36 reads:

> Treaties concluded by the Federal States with foreign countries prior to the going into effect of this law remain undisturbed.

Writing immediately after the violation of Belgian neutrality, was I not justified in disregarding paragraph 36? Its provision is one of "diplomatic courtesy." I did not suppress it. I simply ignored it. The Imperial German Government, in its dealings with foreign nations, recognizes only the law of *Nothwendigkeit*. Mr. Mattern's argument that "from the clause suppressed it appears further that section 2 of paragraph 25 is not applicable to Germans who have become citizens in countries whose treaties with the German States preclude double citizenship in whatever form" is an individual opinion, based upon Mr. Mattern's faith in Germany's respect for her treaties with foreign countries.

Mr. Mattern's contention that "when viewed in its historical perspective, i. e., when viewed in the light of the debates in the Reichstag during the reading of the prospective law and in the light of comparison with the corresponding laws of other nations, the case assumes a somewhat different aspect" is not tenable. The text of the law is explicit. It does not permit of any interpretation other than its plain language gives. It is only in cases of ambiguity that courts

resort to the debates of the legislative body which enacted the law, or to similar foreign laws, to decide upon the meaning of a law. Where no ambiguity exists, courts, when interpreting a law, are bound to gather the intention of the legislators from the language employed in the text of the law. A striking illustration of this has recently been afforded by the decision of the United States Supreme Court in the Diggs-Caminetti case. Because the text of the Mann law was perfectly clear, the court rejected the plea of the plaintiffs that the Mann White Slave Law should be interpreted by reference to the intentions of the law-makers as proven by the debates in Congress. As a historian, Mr. Mattern has a right to hark back to the Reichstag debates and to give us his interesting and valuable comments upon the *Reichsangehoerigkeit.* As an interpreter of the law, his line of argument is inadmissible.

But I do not need to take refuge behind legal technicalities. Waiving the legal inadmissibility of Mr. Mattern's line of argument, one may still be permitted to doubt if he has made his case by citing Reichstag debates and similar laws of other countries.

The citation made by Mr. Mattern from Dr. Delbrueck's speech in the Reichstag on the first reading of the law is irrelevant. I did not state, in *The New Map of Europe,* that the Delbrueck law established the principle of *semel Germanus semper Germanus.* Dr. Delbrueck was inspired by common sense in stating that this was not the subject of the new citizenship law, since no law of the country of origin could compel subjects who had passed outside of the jurisdiction of the state to remain subjects against their will. There was nothing of compulsion in paragraph 25. It was superfluous also for Mr. Mattern to cite laws of other nations to prove that they held to the old idea that the individual could not renounce his allegiance of birth without the consent of his country of origin. All I claimed for paragraph 25 was that it allowed Germans to enjoy dual nationality without the knowledge of their adopted country.

Mr. Mattern's translation of Baron von Richthofen's speech in the Reichstag, far from helping Mr. Mattern's argument, bears me out. "We welcome the fact that the bill permits Germans who, for motives of an economic kind, are compelled to acquire a foreign nationality, to retain at the same time the *Reichsangehoerigkeit.* . . . I need not

remind you of the fact that in England admission to the Exchange is granted a German merchant only if he possesses English citizenship. It is certainly very hard that every German desiring to do business at the London Exchange should be compelled to give up his *Reichsangehoerigkeit.* And further, in the countries of Latin South America, it is by no means easy for a German who does not possess citizenship of these countries to compete with those who have become citizens." Since the Reichstag did not protest against Baron von Richthofen's statement of the object of the law, we may take it for granted that the Reichstag shared the baron's idea that the law was being drafted and enacted with a view to giving German citizens a legal means of retaining dual nationality.

Paragraph 25 provides for application to German Consuls and to the German Chancellor for permission to retain the *Reichsangehoerigkeit.* It says nothing about applying for permission to retain the *Reichsangehoerigkeit* to the country equally interested, i. e., that country in which the German applicant is seeking naturalization. If it was intended that the country where naturalization was sought should be a party to the scheme of retaining the former nationality, why did not the law say so? If it was not intended that the retention of the *Reichsangehoerigkeit* be arranged without the knowledge of the country in which naturalization was sought, the Delbrueck law would certainly have provided that the authorities of the country in question, as well as the German Consul, should be heard, especially as the deal in question could not in fairness and justice be consummated in any other way than as the result of a tripartite agreement.

If I have misunderstood paragraph 25 of the Delbrueck law, it is the fault of paragraph 25. Throwing aside verbiage and special pleading, the student of the paragraph in question, if his right to interpret it according to its plain language be questioned, needs only to ask—why, then, is there a paragraph 25 in the Delbrueck law? If it does not mean what it says, what does it mean?

The United States will have several questions to discuss with Germany and with other nations in the Peace Conference, but none is more important than that of establishing unequivocally once for all problems of nationality. This is a more vital question to us than to the European nations.

We naturalize Europeans by the millions. We ought to insist, as we are now doing with Russia, that all Americans be treated alike and be given equal privileges when traveling and doing business abroad. We ought to be able to assure ourselves that after formal renunciation of a European subjection in order to assume the duties and privileges of American citizenship our naturalized citizens are not held by secret ties to their former country, either of their own volition or through the intrigues of agents of their former country. Since *no man can serve two masters,* paragraph 25 of the Delbrueck law is both illogical and dangerous. If we cannot secure its repeal, we ought at least to make certain, by an additional specific clause in the oath required upon taking out naturalization papers and by diplomatic inquiry to the German Government in each case, that we are not getting any hyphenates among our new citizens of German origin. It is unfortunate that suspicion is cast on hundreds of thousands of American citizens who have acted in good faith, and whose loyalty is certain. But for that—as long as paragraph 25 of the Delbrueck law remains in force—they must blame their country of origin, and not their country of adoption.

HERBERT ADAMS GIBBONS.